



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC NO.: HOha13071317
[REDACTED]

JAMAL L. SMITH, in his official capacity as
EXECUTIVE DIRECTOR of the
INDIANA CIVIL RIGHTS COMMISSION,
Complainant,
v.

DON ESTES, ACTION PROPERTIES,
Respondent,

NOTICE OF FINDING and
ISSUANCE OF CHARGE

The Executive Director of the Indiana Civil Rights Commission ("Commission") pursuant to statutory authority and procedural regulations, hereby issues the following finding with respect to the above-referenced case. Reasonable cause exists to believe that an unlawful discriminatory practice occurred in this instance. A Charge is therefore issued in accordance with 910 IAC 2-6-6(b).

On July 12, 2013, [REDACTED] ("Complainant") filed a Complaint with the Commission against Don Estes and Action Properties ("Respondents") alleging unlawful discriminatory housing practices on the basis of disability in violation of the Indiana Fair Housing Act (Ind. Code § 22-9-5.5 *et. seq.*), the Indiana Civil Rights Law (Ind. Code § 22-9 *et. seq.*) [REDACTED]
[REDACTED] The Commission, therefore, has jurisdiction over the parties and the subject matter of this Complaint.

A Commission investigation has been completed. All parties have been interviewed and have had an opportunity to submit evidence. Based on the final investigative report and a full review of the relevant files and records, the Executive Director now finds the following:

The issue before the Commission is whether Respondent denied Complainant's request for a reasonable modification. In order to prevail on such a claim, Complainant must show that 1) she suffers from a disability as defined by the Fair Housing Laws; 2) Respondent knew or reasonably should have known of Complainant's disability; 3) Complainant specifically requested permission to make the reasonable modification; 4) the modification was necessary to afford Complainant an equal opportunity to use and enjoy her dwelling; and 5) Respondent refused or unreasonably delayed permission to allow the modification.



The evidence is clear that Complainant suffers from a physical impairment that substantially limits her major life activities and Respondent was aware of Complainant's disability. Moreover, there is no dispute that the Complainant requested a modification rather than an accommodation. By way of background, Complainant moved into a two story unit in August 2009 and was on a month-to-month lease with an unspecified end date. Complainant was not ill at that time; however, Complainant's condition subsequently deteriorated at which point she requested an interior modification. In early March 2013, Complainant requested permission to have a stair lift, hand held shower head, and a handrail in the garage installed in the residence and identified a not for profit agency willing to pay for and complete the installation. On or about March 21, 2013, Respondent agreed to allow the modification with the stipulation that the Complainant had to make a deposit of \$300 in order to restore the property to its original state when/if she vacated the unit. Complainant agreed to make \$25 monthly installments; however, Respondent contacted Complainant's Section 8 caseworker on or about March 27, 2013 and requested a rent increase. The caseworker denied the request in early July 2013, and on July 3, 2013, Respondent provided Complainant a 30 day notice to vacate her unit by July 31, 2013. Respondent alleges that per its procedures, if Section 8 denies a rent request, it is their policy to evict the tenant. Complainant was unable to vacate the unit during the time period and Respondent filed for eviction.

There is sufficient evidence to believe that Complainant's request for a reasonable modification was unreasonably delayed and subsequently denied. Specifically, Respondent did not request a rent increase until Complainant made a request for a modification. Complainant had been living on a month to month lease at the same rate, without issue, since April 2012 and the evidence does not indicate that Respondent increased the rent of other substantially similar dwellings. Thus, Respondent's articulated answer appears to be pretext for discrimination on the basis of disability; as such, there is reasonable cause to believe that a violation of the Fair Housing Laws has occurred as alleged.

As permitted by 910 IAC 2-6-6(h), any party to this Complaint may elect to have the claims asserted in this Charge decided in a state court, in lieu of an administrative proceeding under 910 IAC 2-7. Such an election must be made no later than twenty (20) days after receipt of this Notice. The Notice of election must be filed with the Commission and served on the Director, the Respondent and Complainant.

If such an election is not timely made, an administrative hearing of this matter will be scheduled by the Administrative Law Judge. Respondent shall have an opportunity to file an answer to this charge within thirty (30) days of service of this Charge. [REDACTED] and any other person aggrieved by this alleged discriminatory practice may participate as a party in the hearing by filing a request for intervention. All discovery in this matter must be completed fifteen (15) days prior to the date of hearing.

If at any time following service of this charge Respondent intends to enter into a contract, sale, encumbrance, or lease with any person regarding the property that is the subject of this charge,

Respondent must provide a copy of this charge to the person prior to entering into such contract, sale, encumbrance or lease. 910 IAC 2-7-4(e)(3).

October 28, 2013

Date

Jamal L. Smith

Executive Director

Indiana Civil Rights Commission